HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 2844 of 2007

Petitioner
Plaintiff No. 1(A)

Parshuram S/o Santram Aghariya, Aged about 45 years, Occupation-Farmer, R/o Village-Kodatarai, Teh. & Distt. Raigarh (C.G.)

Versus

Respondents

1. Smt. Champawati W/o Viddhaydar Aghariya, Aged about 25 years, R/o Village - Badhadarha, Post-Knvali, Through Dabhara, Teh.- Dabhara, Distt.-Janjgir-Champa. (Defendant No. 1)

2. Padmabai (Died) (Plaintiff No. 1 (B)

2.1 Thandaram S/o Jairam, Aged about 40 years,

2.2 Kamalabai W/o Nannuram, Aged about 36 years,

2.3 Tejram S/o Jairam, Aged about 30 years,
2.1 to 2.3 are LRS of Padmabai and R/o Village-Lebara, Teh. Lelunga, Distt.-Raigarh (C.G.)

3. Nandram S/o Jugatram, Aged about 48 years, R/o Village-Demda, Past Chapale, Teh. Kharsia, Distt. Raigarh (C.G.) (Plaintiff No. 2)

4. Jaitram S/o Jugatram, Aged about 43 years, R/o Village - Temta, Past-Chapale, Teh. Kharsia, Distt.-Raigarh (C.G.) (Plaintiff No. 3)

5. State of Chhattisgarh Through :- Collector, Raigarh (C.G.) (Defendant No. 2)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice **Satish K. Agnihotri**

Present :- Mr. Vineet Kumar Pandey, Advocate for the Petitioner.

ORDER
(Passed on this 8th day of May, 2007)

1. The petitioner is legal heir of the plaintiff No.1 Rukmani. After her death, he was brought on record as plaintiff No.1 (A) in the Civil Suit No. 52-A/98, in the Court of Second Civil Judge, Class-II, Raigarh, wherein the respondent No.1 was arrayed as defendant No.1.

2. The dispute relates to the passing of the judgment and decree dated 8.1.2001, without bringing on record the legal heirs of the plaintiff No.1(B) Mst. Padmabai, who had died on 12.7.2000.

3. By this petition, filed under Article 227 of the Constitution of India, the petitioner impugns the order dated 7.2.2007 (Annexure P/1) passed by the Third Additional District Judge (F.T.C.), Raigarh in Civil Appeal Case No. 2A/03, whereunder the application filed by the respondent No.1 under Order XXII, Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") has been allowed.

4. The indisputable facts, in nutshell, are that the respondent No. 1 came to know about the death of the plaintiff No. 1 (B), namely Mst. Padmabai in August, 2002 that she had died on 12.7.2000. The respondent No. 1 moved an application under Order XXII, Rule 4, along with an application for condonation of delay, in the Court of Third Additional District Judge, Raigarh, wherein Miscellaneous Civil Appeal arising from the judgment and decree dated 8.1.2001 (Annexure P/2) passed by the Second Civil Judge,

Class-II, Raigarh in Civil Suit No. 52-A/98 was pending consideration.

5. The court below, after having considered submissions made by all the parties, came to the conclusion that Mst. Padmabai/ plaintiff No. 1 (B), died on 12.7.2000 before the judgment and decree was passed by the Second Civil Judge, Class-II, Raigarh on 8.2.2001 in Civil Suit No. 52-A/98, but no steps were taken in the trial court to bring legal heirs of the plaintiff No. 1 (B) on record.

6. The application along with an application for condonation of delay filed by the respondent was considered in appeal as the plaintiff No. 1 (B) died during pendency of the civil suit in the trial court. The Third Additional District Judge (F.T.C.), Raigarh accordingly remanded back the matter to the trial court for consideration of an application filed under Order XXII, Rule 4 read with Section 151 of the CPC for bringing legal heirs of the original plaintiff No. 1 (B) on record and also on abatement.

7. I have heard learned counsel appearing for the petitioner, perused the pleadings and documents appended thereto. The Second Civil Judge, Class-II, Raigarh has passed the judgment and decree without taking into consideration the death of the plaintiff No. 1 (B). Thus, the decree passed in favour of dead person was illegal and contrary to the provisions of law and the impugned order dated 7.2.2007 (Annexure P/1) passed by the Third Additional District Judge (F.T.C.), Raigarh was just, proper and in accordance with law and as such, no interference is warranted.

8. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based

on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

9. As a result and for the reasons aforestated, this petition is dismissed, summarily.

Sd/-
Satish K. Agnihotri
Judge

B/-